SUNRISE HOPES RISE IN THE TIMOR SEA*

Further talks between Australia and East Timor ended in Canberra on 9 March 2005 on the optimistic note that an agreement could be reached that would provide the basis for the multi-billion dollar Greater Sunrise oil and gas development to go ahead.

Some twenty per cent of the Greater Sunrise deposit overlaps the Joint Petroleum Development Area (JPDA) set up by the Timor Sea Treaty between East Timor and Australia that came into force on 2 April 2003. That Treaty gives 90 per cent of JPDA revenue to East Timor. On 6 March 2003, Australia and East Timor had also agreed, notwithstanding that maritime boundaries had not been agreed between Australia and East Timor, to a Unitisation Agreement under which 20.1 per cent of production from Greater Sunrise would be attributed to the JDPA and 79.9 per cent to Australia. Australia passed the *Greater Sunrise Unitisation Agreement Implementation Act* 2004 to implement the Agreement, but East Timor made it clear that it would not follow suit with its own legislation.

The resulting talks between the two Governments held late last year failed to resolve this impasse, but the Australian delegation indicated a preparedness to look at any creative solution 'under which the issue of a permanent boundary would be put on ice', and East Timor has expressed similar views. The recently reported words of the Australian Foreign Minister, Alexander Downer, are that the framework of an agreement has been nutted out. It appears that one of the possibilities would be to set aside the determination of a permanent seabed boundary between the two countries for up to a century.

No reference has been made to Indonesia although most of the Greater Sunrise Deposit is closer to Indonesia than to East Timor, but Australia has an earlier Treaty with Indonesia which sets a boundary giving the Deposit to Australia.

These developments fit in with a trend that has emerged of countries seeking to resolve offshore disputes by agreement in order to expedite development. The next meeting with East Timor could take place as early as April this year.

NEW SOUTH WALES

* Pat Brazil, Special Counsel, Phillips Fox, Canberra.

THREATENED SPECIES CONSERVATION REFORMS AND OTHER DEVELOPMENTS*

The *Threatened Species Conservation Amendment Act* 2004

The *Threatened Species Conservation Amendment Act* 2004 (the Amendment Act) was passed on 16 November 2004. Once the Amendment Act commences, the provisions will significantly reform the existing procedures set out under the *Threatened Species Conservation Act* 1995 (the Act). It is proposed that the reforms will reduce delay, provide greater certainty and clarity for applicants for development consent, and provide increased flexibility for mechanisms to offset the impact of development.

Key reforms

The reforms will simplify the process for development assessment by integrating threatened species management into Environmental Planning Instruments ('EPIs'). The key aspects of the reforms are:

- The Government and local councils will identify areas suitable for biodiversity 'certification'. The reforms would prioritise 'hotspot' development areas, where cooperative programs are proposed to be established between the Department of Infrastructure, Planning and Natural Resources, Department of Environment and Conservation and local councils to immediately develop new biodiversity certified EPIs. These areas include the Far North Coast, Greater Sydney Metropolitan Area, Lower Hunter, Illawarra / South Coast and the Sydney-Canberra corridor.

- Environmental biodiversity studies in those areas will be prepared. Financial resources will be available from state agencies.

- Planning options for development and conservation methods in those areas will be identified and evaluated by, for example, identifying conservation areas or considering how conservation could be integrated with other land uses.

- Draft EPIs will be prepared according to the standard process under the *Environmental Planning and Assessment Act* 1979. The public would have the usual right of participation in the drafting process.

- The Minister will then make the decision whether to grant biodiversity certification based on whether an EPI adequately seeks to promote conservation of relevant threatened species and communities, having regard to principles of effective use of resources, ecologically sustainable development, conservation outcomes, alternative strategies and social and economic consequences.

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* Suzanne Westgate, Lawyer, Allens Arthur Robinson.

- EPI certification will remain in force for ten years. The Minister may suspend or revoke certification where the EPI fails to make appropriate provision for the conservation of threatened species in the future.

The outcome of this process is that an applicant for development consent would not need to carry out a separate threatened species assessment, provided the development application is consistent with the provisions of a certified EPI. Development with little or no effect on threatened species will also no longer require threatened species assessment. Development, however, that is likely to have a significant effect on threatened species (as determined by a certified EPI) will still require a species impact statement.

The provisions of the Amendment Act will also change the Scientific Committee's determination process under the Act, including:

- The Scientific Committee will be retained as an independent scientific body to identify species or ecological communities under threat.
- A 'Social and Economic Advisory Committee' will be established to advise the Minister on all aspects of the Act, including the impact of Scientific Committee determinations.
- The Minister will have the ability to refer draft determinations back to the scientific committee for reconsideration if further scientific assessment is warranted.
- The Scientific Committee will be required to publish reasons for its decisions against set guidelines based on the International Union for the Conversation of Nature criteria.
- The Scientific Committee will be required to prioritise its consideration of nominations.

The Amendment Act is also proposed to increase integration between Scientific Committee listings and EPI certification. For example, investigations as part of the EPI certification process will identify any potential threatened species prior to the EPI certification. Any new listing of threatened species occurring after certification will not automatically 'reopen' the EPI's certification status, and development applications that are consistent with the certified EPI would not need to be supported by further assessment. In addition, a revised 'test of significance' will apply to development not covered by a certified EPI, allowing a more flexible approach that can take into account voluntary reservation of land, protection of land for conservation in some other way or restoration of habitat.

The Government will issue a priorities action statement to be reviewed and updated every three years through a public participation process. The statement will set out strategies to be adopted to promote recovery of each threatened species and to manage key threats to specified species.

Potential outcomes

The Amendment Act has been hailed as a significant reform of the threatened species conservation system by incorporating the conservation of species into EPIs. On a practical level, this should clarify the planning and approval process and provide far greater certainty to landowners and developers. The reforms are designed to enable stakeholders to take a more active role in the formulation of threatened species conservation schemes through the planning process.

It is likely that the reforms proposed will considerably increase the burden on local government in the conservation of threatened species, through preparation of EPIs, compliance and enforcement. Consequently, certification of the various EPIs will take some time. Although the Government has indicated that it will specifically target 'hotspots' in the near future, there is a possibility that some local councils may not seek certification at all.

Other recent developments

The Scientific Committee has made to important recent determinations.

Firstly, the Scientific Committee made a final determination to list the Lower Hunter Spotted Gum Ironbark Forest (the *LHSGIF)* as an endangered ecological community on 18 February 2005. The LHSGIF occurs in the Cessnock-Beresfield area in the Central and Lower Hunter Valley. The listing will mean that, amongst other things, additional assessment (including species impact statements) under the *Environmental Planning and Assessment Act* 1979 ('the EP&A Act') will need to be undertaken for activities that could affect the LHSGIF.

Secondly, and of more widespread interest, the Scientific Committee has made a preliminary determination to list 'subsidence due to longwall mining' as a key threatened process under the Act. Submissions were due by 28 January 2005. If 'subsidence due to longwall mining' is listed as a key threatening process, the National Parks and Wildlife Service will then prepare a threat abatement plan that will:

- outline actions to manage subsidence;
- explain how the success of these actions will be measured; and
- identify the authorities that will be responsible for carrying out those actions.

A determining authority, in considering a species impact statement's under the EP&A Act, must have regard to the terms of a threat abatement plan.

In addition, the fact that an activity is recognised as a threatening process must be taken into account by a determining authority when considering whether the activity is likely to 'significantly affect' a threatened species, population, ecological community or habitat, for the purposes of assessment under Part 5 of the EP&A Act

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